

No. 14076

United States
Court of Appeals
for the Ninth Circuit

ANGEL VIDALES, Also Known as ANGEL
VIDALES-GALVAN,

Appellant,

vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

DEC 4 1953

PAUL P. O'BRIEN



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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Los Angeles 12, Calif.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;
CLYDE C. DOWNING,
ROBERT K. GREAN,
Assistants U. S. Attorney,
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Los Angeles 12, Calif.

United States District Court, Southern District
of California, Central Division

No. 14814-B. H.

ANGEL VIDALES, also known as ANGEL VI-
DALES-GALVAN,

Plaintiff,

vs.

JAMES P. McGRANERY as Attorney General of
the United States,

Defendant.

PETITION FOR DECLARATION OF UNITED
STATES NATIONALITY UNDER SEC-
TION 503 OF THE NATIONALITY ACT
OF 1940 (8 U.S.C.A. 903)

The plaintiff for cause of action alleges:

I.

That this complaint is filed and these proceed-
ings are instituted against the defendant under
Section 503 of the Nationality Act of 1940 (54
Statute 1171, 1172, 8 U.S.C.A. 903), for a judgment
declaring the plaintiff to be a national of the
United States.

II.

Plaintiff is a resident of Los Angeles County,
California.

III.

That the defendant is the duly appointed, quali-
fied and acting Attorney General of the United

States and as such is head of the Department of Justice; that the Commissioner of Immigration and Naturalization at Washington, D. C., the members of the Board of Immigration Appeals, Department of Justice, Washington, D. C., and the members of the Board of Special Inquiry, District of San Ysicro, California, are and at all times herein complained of were [2*] executive officers of the defendant within the Department of Justice.

IV.

That the plaintiff Angel Vidales, also known as Angel Vidales-Galvan, was born in Anaheim, California, on July 11, 1922, and that by virtue of his birth in this country is a national of the United States; that the various boards of special inquiry, the Commissioner of Immigration and Naturalization at Washington, D. C., and the Board of Immigration Appeals at Washington, D. C., are the official executive and subordinate officers and agents of the defendant James P. McGranery as Attorney General of the United States. That the defendant, acting through his official executives, subordinates and agents, has denied and continues to deny the plaintiff rights and privileges to which the plaintiff is entitled to as a national of the United States, by debarring and excluding plaintiff from entering the United States as a national of the United States in January, 1950, and will continue to do so in the future unless restrained by this court.

Wherefore, the plaintiff prays for judgment declaring him to be a national of the United States;

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

and that the defendant, his agents and servants, be restrained and enjoined from excluding or debarring the plaintiff from the United States or otherwise restraining or treating him as an alien pending the determination of said matter, and for such other and further relief as may be just and proper.

/s/ ANGEL VIDALES,
Plaintiff.

/s/ J. WIDOFF,
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed December 5, 1952. [3]

[Title of District Court and Cause.]

ANSWER TO PLAINTIFF'S COMPLAINT

Comes the defendant, James P. McGranery, as Attorney General of the United States through his attorneys Walter S. Binns, United States Attorney for the Southern District of California; Clyde C. Downing and Robert K. Grean, Assistants United States Attorney for the Southern District of California, and in answer to plaintiff's complaint herein admits, denies, and alleges as follows:

I.

Defendant neither admits nor denies the allegations contained in Paragraph I of plaintiff's complaint on the ground that said allegations are conclusions of law.

II.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph II of said complaint, and on that ground, denies said allegations.

III.

Admits the allegations contained in Paragraph III of plaintiff's complaint except that heretofore and subsequent to the filing of plaintiff's complaint [5] James P. McGranery ceased to be Attorney General of the United States and has been succeeded by Herbert Brownell as Attorney General of the United States and head of the Department of Justice and that at the proper time defendant will stipulate that the said Herbert Brownell may be substituted as the proper party defendant.

IV.

Answering Paragraph IV of plaintiff's complaint, defendant admits that the plaintiff was born in Anaheim, California, on July 11, 1922, but denies that said plaintiff is now a citizen of the United States. Defendant further admits that the defendant, acting through his official executives has denied entry to the United States of the plaintiff, but alleges that said denial of permission to enter is based upon the ground that the plaintiff is an alien.

For a further separate and second affirmative defense, defendant alleges:

I.

That the plaintiff departed the United States for Mexico in 1925 and remained in Mexico from 1925 until on or about January 15, 1946.

II.

That the plaintiff reached his 18th birthday on July 11, 1940, while a resident of Mexico.

III.

That the defendant knew the United States was at war during the years 1942 to 1945, inclusive, and knew also that he had an obligation during the years 1942 to 1945, inclusive, to offer his services in the armed forces of this country.

IV.

That the plaintiff remained outside of the jurisdiction of the United States in time of war, to wit: From September 27, 1944, to January 15, 1946, for the purpose of evading or avoiding training and services in the Land or Naval Forces of the United States.

V.

That the plaintiff has, thereby, expatriated himself and has lost his United States nationality. [6] And for a further, separate and third defense, defendant alleges:

I.

Plaintiff's complaint fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dis-

missing said complaint, denying the relief prayed for therein, and for such other relief as to the Court seems just and proper in the premises.

WALTER S. BINNS,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,

/s/ ROBERT K. GREAN,

Assistant U. S. Attorney, Attorneys for United
States of America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 5, 1953. [7]

[Title of District Court and Cause.]

PRE-TRIAL ORDER

At a conference held under Rule 16, F.R.C.P., by direction of Wm. M. Byrne, Judge, the following admissions and agreement of fact were made by the parties and require no proof:

(1) That the plaintiff was a citizen of the United States by birth, having been born at Anaheim, California, on July 11, 1922.

(2) That the plaintiff left the United States and went to Mexico about 1925 and remained there until about January, 1946, when he returned to the United States. He remained in the United States until about July, 1948.

(3) That the plaintiff left the United States in 1948 and went to Mexico and sought to return to the United States the same year but was excluded by the Immigration and Naturalization Service of the United States, Department of Justice, of which the Attorney General of the United States of America is the department head. [9]

Issues of Fact to Be Tried

(1) Did the plaintiff become expatriated by remaining outside the United States during time of war and an emergency for the purpose of evading military training and service in the armed forces of the United States as provided by Section 401 (j) of the Nationality Act of 1940 (8 U.S.C.A., 801 (j)).

Issues of Law

(1) The issue in this is whether or not the plaintiff did commit any act which could be construed as coming within the provisions of Section 401 (j) of the Nationality Act of 1940 (8 U.S.C.A., 801 (j)).

Dated:

/s/ WM. M. BYRNE,
Judge of the U. S. District
Court.

/s/ J. WIDOFF,
Attorney for Plaintiff.

/s/ ROBERT K. GREAN,
Attorney for Defendant.

[Title of District Court and Cause.]

MINUTES OF THE COURT—JULY 14, 1953

Present: The Hon. Wm. M. Byrne,
District Judge.

Proceedings: For trial.

On motion of plaintiff it is ordered that Herbert A. Brownell, Attorney General, U.S.A., be, and he is substituted as defendant.

J. Duran is sworn as Spanish Interpreter and is examined on voir dire by Attorney Grean.

Plaintiff is called, sworn, and testifies in his own behalf through said interpreter.

At 11:10 a.m., court recesses. At 11:15 a.m., court reconvenes herein.

Plaintiff resumes testimony in his own behalf.

Plaintiff rests.

Ralph J. Lloyd is called, sworn, and testifies for defendant.

Deft's Ex. A is marked for ident. and admitted in evidence.

Defendant rests.

Counsel argue. Court makes a statement, and

It is ordered that judgment is in favor of defendant; Attorney Grean to prepare findings and judgment accordingly.

EDMUND L. SMITH,
Clerk;

By /s/ EDW. F. DREW,
Deputy Clerk. [11]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled matter came on regularly for trial on the 14th day of July, 1953, in the above-entitled Court, before the Honorable William M. Byrne, Judge presiding, the plaintiff being present in Court and being represented by his attorney, J. Widoff, and the defendant Herbert Brownell, Jr., as Attorney General of the United States, having been substituted by stipulation of the parties and order of the Court as party defendant, being represented by his attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing and Robert K. Grean, Assistants United States Attorney, by Robert K. Grean; and evidence both oral and documentary having been presented, and the matter having been tried on its merits, and the Court, being fully advised in the premises, hereby makes its Findings of Fact and Conclusions of Law:

Findings of Fact

I.

That the Court has jurisdiction of the subject matter of the within action under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903). [12]

II.

Plaintiff claims Los Angeles County, California, within the Southern District of California, as his permanent residence.

III.

That the defendant, Herbert Brownell, Jr., is the duly appointed, qualified and acting Attorney General of the United States, and as such is the head of the Department of Justice.

IV.

That the plaintiff, Angel Vidales, also known as Angel Vidales-Galvan, was born in Anaheim, California, on July 11, 1922, and was of parents both of whom were citizens of Mexico. That he was taken to Mexico when he was a child of about three in the year 1925. Plaintiff remained in Mexico until January, 1946, when he first returned to the United States.

V.

That the plaintiff knew almost all of his life that he was a citizen of the United States, and that for more than fifteen years it was his intention to come to the United States.

VI.

That the plaintiff knew that the United States was at war and that he had an obligation during the years 1942 to 1945, inclusive, to offer his services in the armed forces of the country, he having become twenty-one years of age in 1943.

VII.

That the plaintiff remained outside the jurisdiction of the United States after September 27, 1944, to evade or avoid training and service in the armed forces of the United States, in time of war or during a period declared by the President to be a period of national emergency.

Conclusions of Law

I.

That the plaintiff, having been born in the United States, was a citizen of the United States by birth, under Section 1 of the Fourteenth [13] Amendment of the Constitution of the United States.

II.

That the plaintiff, from and after September 27, 1944, having remained outside of the jurisdiction of the United States in time of war and during a period declared by the President to be a period of national emergency, for the purpose of evading or avoiding training and service in the land or naval forces of the United States, has expatriated himself under Section 401 (j) of the Nationality Act of 1940 (8 U.S.C. 801 (j)).

III.

That plaintiff has lost his United States citizenship by expatriation.

IV.

That the defendant should have judgment against the plaintiff, and for his costs.

Dated this 4th day of August, 1953.

/s/ WM. M. BYRNE,

United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 1, 1953. [14]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

Plaintiff objects to the findings set forth in paragraphs VI and VII of the proposed findings of fact submitted herein by the defendant, and in lieu thereof proposes the finding that the plaintiff did not know the United States was at war or that he had any obligation during the years 1942 to 1945 to offer his services in the armed forces of the United States, and that the plaintiff did not remain outside the jurisdiction of the United States after September 27, 1944, or any other time, with the intention or purpose of evading or avoiding training and service in the armed forces of the United States in the time of war or any other time, and that his failure to register for military service in the United States during the period prior to his return to the United States was due to the fact that he did not have the funds or means with which to leave his place of residence in Mexico or pay the expense of transportation from his place of residence to the United States sooner than the time that he [16] actually left Mexico. That he had intentions of coming to the United States since attaining majority, but was prevented from so doing for lack of funds.

Plaintiff objects to the proposed conclusions of law set forth in paragraphs II, III and IV of the proposed conclusions of law submitted herein by the defendant, and in lieu thereof proposes the

following conclusions of law: That the plaintiff did not remain outside of the jurisdiction of the United States in time of war and during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding service in the land or naval forces of the United States, and has therefore not expatriated himself under Section 401 (j) of the Nationality Act of 1940 (8 U.S.C. 801 (j)). That plaintiff has not lost his citizenship by expatriation and is a citizen of the United States. That the plaintiff have judgment against the defendant and that it is declared and determined that the plaintiff is a citizen of the United States.

Dated this 28th day of July, 1953.

/s/ J. WIDOFF,

Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 29, 1953. [17]

In the United States District Court in and for the Southern District of California, Central Division

No. 14814-W.B. Civil

ANGEL VIDALES, also known as ANGEL VIDALES-GALVAN,

Plaintiff,

vs.

HERBERT BROWNELL, JR., as Attorney General of the United States,

Defendant.

JUDGMENT

The above-entitled matter came on regularly for trial on the 14th day of July, 1953, in the above-entitled Court, before the Honorable William M. Byrne, Judge presiding, the plaintiff being present in Court and being represented by his attorney, J. Widoff, and the defendant Herbert Brownell, Jr., as Attorney General of the United States, having been substituted by stipulation of the parties and order of the Court as party defendant, being represented by his attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing and Robert K. Grean, Assistants United States Attorney, by Robert K. Grean; and evidence both oral and documentary having been presented, and the matter having been tried on its merits, and the Court being fully advised in the premises, and having heretofore filed its Findings of Fact and Conclusions of Law;

It is hereby ordered, adjudged and decreed that the plaintiff is not a national or citizen of the United States, having expatriated himself by remaining outside of the jurisdiction of the United States, after September 27, 1944, in time of war and during a period declared by the President to be a period [18] of national emergency, for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

It is further ordered that the defendant have

judgment against the plaintiff, and for his costs.
Costs taxed at \$20.00.

Dated this 4th day of August, 1953.

/s/ WM. M. BYRNE,

United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 11, 1953.

Docketed and entered August 11, 1953. [19]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the above-named defendant and to Walter S.
Binns, United States Attorney:

Please take notice that the above-named plaintiff hereby appeals to the United States Court of Appeals from the judgment of the above-entitled court entered on the 11th day of August, 1953, and to the whole thereof.

Dated this 2nd day of September, 1953.

/s/ J. WIDOFF,

Attorney for Plaintiff.

[Endorsed]: Filed September 2, 1953. [21]

In the United States District Court, Southern
District of California, Central Division

No. 14,814-W.B., Civil

Honorable Wm. M. Byrne, Judge Presiding.

ANGEL VIDALES, Also Known as ANGEL
VIDALES-GALVAN,

Plaintiff,

vs.

JAMES P. McGRANERY, as Attorney General of
the United States,

Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff:

J. WIDOFF, ESQ.

For the Defendant:

WALTER S. BINNS,
United States Attorney;CLYDE C. DOWNING,
Asst. U. S. Attorney, Chief, Civil
Division;ROBERT K. GREAN,
Asst. U. S. Attorney, byROBERT K. GREAN,
Assistant United States Attorney.

Tuesday, July 14, 1953, 9:45 A. M.

The Clerk: No. 14814-W.B., Civil, Angel Vidales, also known as Angel Vidales-Galvan, v. James P. McGranery, as Attorney General of the United States, for trial.

The Court: Are you ready?

Mr. Grean: Yes.

Mr. Widoff: Yes.

The Court: You may proceed.

MOTION FOR SUBSTITUTION OF
PARTY DEFENDANT

Mr. Widoff: Your Honor, I have been informed by Mr. Grean this morning that we have a new Attorney General by name of Herbert Brownell, and we have sued the one that was predecessor. Therefore, I will make a motion for substitution of defendant, substituting Herbert Brownell in lieu of the present defendant, Mr. McGranery.

Mr. Grean: The defendant will stipulate that Mr. Herbert Brownell will be substituted as party defendant, as Attorney General of the United States.

The Court: Very well. That will be the order.

Mr. Widoff: We have an interpreter, your Honor. May the interpreter be sworn?

The Court: Yes.

Mr. Widoff: Mr. Duran, please.

(Mr. J. Duran was sworn an interpreter.)

The Clerk: Your full name, please? [2*]

Mr. Duran: J. Duran. The initial is J.

Mr. Grean: May it please the Court, may I have a short voir dire of the interpreter?

The Court: Yes.

Mr. Grean: Well, I request that the interpreter be sworn, please.

The Clerk: As a witness?

Mr. Grean: Yes.

J. DURAN

the interpreter, being first duly sworn, testified as follows:

Voir Dire Examination

By Mr. Grean:

Q. Mr. Duran, will you stand over by the witness chair so the reporter can hear you.

You are qualified as an interpreter in the Federal courts? A. Yes, sir I am.

Q. And are you acquainted with the plaintiff in this case? A. No, sir.

Q. You have had no occasion to meet or talk with him prior to coming into this courtroom?

A. Excepting when he came over to my office to engage me to act as an interpreter.

Q. Who was that, that engaged you, the plaintiff, Mr. Vidales? [3] A. Yes.

Q. You talked with him at that time?

A. Yes, I did.

Q. He is the one who engaged you?

A. No. Mr. Widoff is the one that called me first.

(Testimony of J. Duran.)

Q. And at that time you talked to Mr. Widoff?

A. I did.

Q. And was there anything in the arrangement under which you have been employed as an interpreter that prevents you from stating truly to the court what questions are asked and what the answers are in Spanish as translated into English?

A. None at all.

Mr. Grean: No further questions.

ANGEL VIDALES

the plaintiff, called as a witness in his own behalf, was duly sworn and testified through the interpreter as follows:

The Clerk: His full name?

The Interpreter: Angel Vidales, Angel Vidales-Galvan.

Mr. Widoff: Your Honor, the stipulation indicates that this plaintiff was born in the United States, in Anaheim, California, on July 11, 1922, and left the United States for Mexico in about 1925, and remained there until January, 1946, when he returned to the United States, and I will therefore just rely on the stipulation as to his date of birth, place of [4] birth, and the fact that he left in about 1925, and start from there, your Honor.

Mr. Grean: No objection.

The Court: Very well.

(Testimony of Angel Vidales.)

Direct Examination

By Mr. Widoff:

Q. About how old were you when you left the United States? A. About three years.

Q. And with whom did you leave the United States?

A. With my father and my mother and brothers.

Q. And where did you go to live after you left the United States?

A. To the State of Zacatecas.

Q. And is that in Mexico?

A. Yes, in Mexico.

Q. At what sort of a place did you reside then, after you left the United States?

A. Well, for a while we were at Valpariso Valle, and from there, then, we went to live on a ranch on the Sierras.

Q. When did you go to live at this ranch in the Sierras? A. About 1927.

Q. What sort of a ranch was this? Can you describe this ranch? [5]

A. It is a very small ranch, about ten homes.

Q. And how far is that ranch from any town, the nearest town or village?

A. About 50 or 65 miles.

Q. And until what age did you live at this ranch? A. Until the age of 20 years.

Q. And at what year did you leave the ranch?

A. Well, we did not leave that ranch. We just moved to another ranch, that is all.

(Testimony of Angel Vidales.)

Q. And at what other ranch did you live?

A. In a ranch close by where we lived before we went there to farm there.

Mr. Grean: May I ask, if the Court please, that the witness be instructed to speak up so that we may hear his answers?

The Court: Yes, speak louder.

Q. (By Mr. Widoff): And this second ranch that you went to live, this last one you mentioned, how far was that from the nearest town or village?

A. About 70 miles.

Q. And who all lived on this ranch with you?

A. My father, my mother, and my brothers and sisters.

Q. And what kind of work did you do on this ranch? A. Only planting, farming.

Q. What did you farm? [6] A. Corn.

Q. And did you go to any schools at that time?

A. There was no school.

Q. How did you learn to read and write?

A. I didn't learn. When I grew up I have learned a little bit.

Q. Who taught you? A. My mother.

Q. While you were on either of these ranches, did you ever go to the nearest town or village?

A. Oh, yes, I would go there once in a while with my father.

Q. How did you get to this village?

A. On horseback.

Q. How long did it take?

A. About eight hours.

(Testimony of Angel Vidales.)

Q. And how often did you go to the village?

A. Well, I wouldn't go there often. I would go there every four or five months.

Q. And always with your father?

A. Yes, always with him.

Q. What was the purpose of going to this village? A. Well, to bring provisions or so.

Q. And during the time that you were at the ranch, did you ever hear about the United [7] States? A. No.

Q. When did you first?

A. I was very small.

Q. When did you first find out that you were born in the United States?

A. Oh, I was about 12 or 14 years.

Q. Who told you that?

A. Well, while my mother and father were talking to each other.

Q. And when you were in Mexico, did you ever hear that the United States was in a war, involved in a war?

A. No, I didn't know anything about it, because at the ranch one doesn't know about those things.

Q. When you went to the village did you ever hear anything about the United States or about the war the United States was involved in?

A. No.

Q. Will you tell the Court how it happened that you first got the idea of coming to the United States, how did that occur?

A. Well, when I was of age, you know, when one hears people talking about coming to the United

(Testimony of Angel Vidales.)

States, and I could not leave there because I didn't have any means.

Q. Didn't have any what?

A. Any means with which to live. [8]

And then finally my father, after a long time, he helped me for me to come here.

Q. Well, why did you want to come to the United States?

A. Well, to know this place here and to become acquainted with this country because I had heard talk about it.

Q. Did you have any relatives over in the United States? A. Yes.

Q. Did they ever visit you on a ranch?

A. No.

Q. Why didn't you come to the United States before you did come?

A. Because I did not have any money to move around with.

Q. How much would it cost to go from the ranch that you were then living on to the Mexican-American border?

Mr. Grean: At what time, counsel?

Q. (By Mr. Widoff): At the time that you actually left.

A. About a hundred pesos Mexican money.

Q. How did you get the money to go to the border? A. My father gave it to me.

Q. And how did he get it?

A. Well, I believe that he saved it with a little money that he got from his work.

Q. Well, what kind of work did he do to make this money?

(Testimony of Angel Vidales.)

A. Well, he was farming and he would sell corn.

Q. And what were you doing at that time? [9]

A. I was only helping him.

Q. Was he paying you any wages?

A. No, no.

Q. And tell the Court how you got away from the ranch, in what manner you got away, how it was done.

A. I left the ranch on horseback to the town.

Q. Who went with you? A. My father.

Q. What town was it that you went to?

A. Valpariso Valle, Zacatecas.

Q. And how large a town is that?

A. Oh, it isn't very large. It is about 500 people.

Q. And was there a train there, or what?

A. No. There are busses.

Q. Did you take a bus from there?

A. Yes, a bus.

Q. And did you leave your father there?

A. Yes. He remained there.

Q. All right. And then where did you go from that town? A. To Frensillo.

Q. And was there a train in Frensillo?

A. No. The train goes by about two miles from there.

Q. Well, what did you do when you got to Frensillo?

A. I got there, I went there to a cousin, and I was there for about two weeks with him. [10]

Q. And how did you leave there, by train?

A. No. From Frensillo I left on the bus to go to the train.

(Testimony of Angel Vidales.)

Q. And where did you get the train?

A. The station is called Canitas.

Q. And where did you go?

You got on the train at Canitas? A. Yes.

Q. Where did you go from there?

A. To Juarez.

Q. What happened when you got to Juarez?

A. When I got to Juarez, I had an address of a friend of my father's.

Q. What did you do when you got to Juarez?

A. I went to his home.

Q. And then what did you do?

A. While I was there with him I told him my intentions.

Q. And what happened then?

A. Well, he asked me if I had any papers and I told him that I only had my baptismal record.

Q. Then what happened?

A. Then he took me to the border, to the line, to the custom house.

Q. Then what happened?

A. Well, then they told me that that baptismal paper [11] was not sufficient.

Q. Then what happened?

A. Then they told me to go to the American Consulate at Juarez.

Q. Then what happened?

A. Then I was there with him and he gave me a certificate to cross into the United States.

Q. And did you cross into the United States?

A. Yes.

(Testimony of Angel Vidales.)

Q. What year was that? A. 1946.

Q. And after you crossed into the United States, did you register for military service?

A. Yes.

Q. How long did you stay in the United States?

A. Well, until today, until this date.

Q. How did you know about registering with the military service after you got into the United States?

A. Because I have some cousins here and they told me it was necessary for me to do it right away.

Q. And before you came to the border on this occasion in 1946, did you know anything about the laws of the United States? A. No.

Q. Did you know before you crossed the border that as [12] a citizen you were supposed to register with an American consul? A. No.

Q. After you were in the United States for a while, did you leave voluntarily? A. Yes.

Q. How long were you in the United States before you left? A. About two years.

Q. And at what point did you cross over into Mexico?

A. Well, sometimes I have crossed over before, just to visit around for pleasure, and at that time I went to see my relatives.

Q. And then what happened the last time that you had crossed over the border? What happened when you tried to get back into the United States?

A. Well, there at Calexico they did not allow me

(Testimony of Angel Vidales.)

to cross over. They took my papers away.

Mr. Widoff: The stipulation, your Honor, also indicates that he was excluded from the United States, so I don't think it is necessary to go into details on that. That is No. 3, your Honor.

The Court: Yes.

Q. (By Mr. Widoff): When you were in Mexico, did you ever vote in Mexico? [13]

A. No, sir.

Q. Did you ever work for the Mexican Government? A. No, sir.

Q. Did you ever serve in the military service of the Mexican Government? A. No.

Q. You have always been willing to serve in the military service of the United States?

A. Yes.

Q. Have you ever received a notice to appear for induction in the military service? A. No.

Q. What kind of a card did you get when you registered for the military service?

(The witness produces card.)

Mr. Widoff: The witness shows that he has a notice of classification IV-F, Local Board No. 277, Los Angeles County, which is made out to Angel Galvan-Vidales. Order No. 13130-A, and it is dated June 19, 1946, classified IV-F.

The Court: What was the date?

Mr. Widoff: June 19, 1946, your Honor.

Mr. Grean: I don't see the materiality of it, if the Court please, but I won't object to it.

(Testimony of Angel Vidales.)

Mr. Widoff: Well, I put it for the purpose of showing intention and it may have some bearing on that point. That [14] is all for the present, your Honor.

Cross-Examination

By Mr. Grean:

Q. Mr. Vidales, when did you return from the small ranch upon which you were living, to Valle Valpariso? A. When did I return?

Q. Yes. A. To live there?

Q. That is right.

A. I have never lived at that town.

Q. You have never lived at Valle Valpariso?

A. I have lived there only for a season, for a month or so.

Q. Where were you living at the time you started for the United States?

A. At the ranch.

Q. And this ranch was not at Valle Valpariso?

A. No. It is quite a bit away from the Valle.

Q. Where were you living in 1943?

A. I was at the ranch.

Q. And at that time you were not living in Valle Valpariso?

A. No. I would go there only, you know, for pleasure, for a few days or weeks.

Q. When did you first hear that the United States and [15] Mexico had been at war?

A. Well, I have never known that Mexico was at war.

(Testimony of Angel Vidales.)

Q. When did you first hear that the United States was at war?

A. The first time it was about in 1945.

Q. And where did you hear that?

A. At the times that I would go to the town. I would go there, but I couldn't leave there.

Q. You never heard about it before 1945?

A. No.

Q. How much in wages were you earning while you were farming in Mexico?

A. Well, we would only earn enough to get along with, that is about all.

Q. And how much were you paid each day?

A. No. I wasn't paid anything. I was working with my father.

Q. Mr. Vidales, do you recall a hearing given you at Calexico, California, in August of 1948?

A. Yes.

Q. And do you recall that you were asked questions and gave answers at that time?

A. Well, I don't know what kind of questions they were.

Q. But you do recall that you were questioned at that time? [16]

A. Yes.

Q. And do you recall that you gave answers to those questions?

A. Well, I remember that they asked me why I hadn't given service before.

Q. And what did you say at that time in response to that question?

A. Well, I wasn't here; I couldn't have served.

(Testimony of Angel Vidales.)

Q. Do you recall the following question—and I will read the question and read your answer and ask if that question was asked you and if that was your answer:

“Q. Where were you in November, 1943?”

“A. I was living with my parents in Valle Valpariso, Zacatecas, Mexico.”

Mr. Grean: If your Honor please, I will give a copy of this transcript to the interpreter so that he may follow the questions.

The Interpreter: Your Honor, it would be easier if he would break the question, just give me the question and then the answer. It would be much easier. I could remember it better.

The Court: If you will just ask the question and then let him interpret it, and then the answer.

Q. (By Mr. Grean): Was that question asked of you and was that your answer? [17]

A. I don't remember.

Q. When did you reach the age of 18 years, Mr. Vidales? When did you reach the age of 18 years?

A. Well, in '40.

Q. In 1940?

A. I believe so. I don't remember.

Q. And did you register for military service in Mexico? A. No.

Q. Was it not the law in Mexico, that all males in Mexico, upon reaching the age of 18 years, would register for the armed services?

A. Well, at that time no one would say anything about it.

(Testimony of Angel Vidales.)

Q. I call your attention to a question and answer, and this is on page 4, Mr. Interpreter:

“Q. Was it not the law in Mexico, that all males in Mexico, upon reaching the age of 18 years, should register for the armed forces of Mexico?”

The Interpreter: Where is that?

Mr. Grean: That is at about the middle of the page.

“A. Yes, I believe that is the law there. However, I did not register for the Mexican military draft because I was a native-born citizen of the United States, and, if I registered for military service in any country, it was going to be the [18] United States.”

A. Yes.

Q. Was that question asked of you and was that your answer? A. I don't remember.

Q. How long have you known that you are a citizen of the United States, Mr. Vidales?

A. About eight years or nine years.

Q. I believe you testified this morning that you knew when you were about 12 or 14 years. Do you recall?

Mr. Widoff: Pardon me. Not to confuse the witness, I think it was testified that he was told that he was born here when his parents were talking, but that would be different from knowing that he was a citizen at that age. He may not even know what the word “citizen” implied.

The Court: Let us go back in the record. As to the last question, it is ambiguous.

(Testimony of Angel Vidales.)

Mr. Grean: I will refer to the record of the hearing and read a question and your answer and ask you if that was asked and if that was your answer.

Q. (Reading):

“Q. For how long have you known that you are a citizen of the United States?”

“A. All my life. My parents told me so to begin with, when I was very small.” [19]

A. Well, I didn't know that there was such a thing as that. I only knew that I was born in the United States.

Mr. Widoff: What was that page from which you just asked the question?

Mr. Grean: Page 4.

Mr. Widoff: Page 4.

Mr. Grean: I didn't get the answer. May I have it read?

(Record read by the reporter.)

Q. (By Mr. Grean): Was that question asked of you and was that your answer?

A. I don't remember if that was made to me.

Q. How long before you came to the United States had you planned or did you have the intention of coming to the United States?

A. Oh, for about ten months or eight months.

Q. I will read a question to you:

“Q. For how long a time, prior to your entry into the United States on January 15, 1946, did you

(Testimony of Angel Vidales.)

have the intention of coming to the United States?"
It is on the bottom of Page 4, Mr. Interpreter.

The Interpreter: Yes. I got it.

Q. (By Mr. Grean): "A. For, more or less, fifteen years I have intended to come to the United States."

Was that question asked of you and was that your answer? [20] A. I don't remember.

The Court: Will the reporter read the previous question and answer?

(Record read by the reporter.)

Q. (By Mr. Grean): Why didn't you come to the United States before you did, Mr. Vidales?

A. Well, because I was not able to. I had no means to do so. We were just getting along.

Q. Wasn't it because your father wouldn't let you come?

A. No. It wasn't that he did not allow me to come. It was because I had no money to come with.

Q. I call your attention again to the questions and answers which I will read to you.

The Interpreter: What page?

The Court: Page?

Mr. Grean: Page 5, at the top.

(Reading.)

"Q. When did you finally make up your mind to come to the United States?

"A. Well, for one thing, my father would not

(Testimony of Angel Vidales.)

give me permission to come to the United States, before October of 1945.”

A. Well, he would not give me permission before, when I was very young.

Q. Was that question asked of you and was that your [21] answer?

A. Well, I don't remember.

Q. When did you reach the age of 21 years, Mr. Vidales? . A. In '41, isn't it?

Q. It would be '43, is that correct?

A. I don't remember.

Q. Now, the question I will call to your attention:

“Q. Why was it that he gave you permission to come to the United States, after October of 1945, while he would not before?”

“A. The only reason that I can give at this time was that I was so small.”

Was that question asked of you and was that your answer?

A. I believe so. I don't remember about those questions.

(Reading.)

“Q. Did your father know that had you come to the United States, during the years 1942, 1943, and 1945, that you would have been liable for service in the armed forces of the United States?”

“A. Yes, I think he did.”

Was that question asked of you and was that your answer?

(Testimony of Angel Vidales.)

A. Yes, that question was made to me, but whether if he knew that or not, I didn't know.

(Reading.) [23]

“Q. Was that the reason that he did not give you permission to come to the United States before October of 1945? A. Yes.”

Was that question asked of you and was that your answer?

A. How is that question again?

Mr. Widoff: Reread the question to him, will you, please?

(Question reread by the interpreter.)

A. Well, I don't remember.

Q. (By Mr. Grean): I will reread this question and answer for the sake of the question that follows:

“Q. When did you reach the age of 21 years?

“A. In 1943.”

Was that question asked of you and was that your answer? A. Yes.

(Reading.)

“Q. Then is it not a fact that after that date you were a man grown? A. Yes.”

Was that question asked of you and was that your answer? A. Well, yes.

(Reading.)

“Q. Then is it not also a fact that after reach-

(Testimony of Angel Vidales.)

ing 21 years of age in 1943, you could have come to the United States at any time? [23]

“A. Yes. I wanted to come, but my parents wouldn’t let me.”

Was that question asked of you and was that your answer?

A. Yes. That question, they asked that of me.

Q. And was that your answer?

A. Well, they didn’t want to let me come. How could they let me come if I didn’t have any money to come with?

(Reading.)

“Q. Why would not your parents let you come to the United States until October, 1945?

“A. On account of the war. They were afraid to have me enter the United States armed forces.”

A. I don’t remember whether that question was asked of me or that I may have answered that way.

(Reading.)

“Q. Then, did you remain in Mexico until after the end of the war, merely to comply with the wishes of your parents? A. Yes.”

Was that question asked of you and was that your answer? A. I don’t remember.

(Reading.)

“Q. Since September 27, 1944, have you remained outside the jurisdiction of the United States, in time of war, or during a period declared by the President [24] to be a period of national emergency,

(Testimony of Angel Vidales.)

for the purpose of evading or avoiding training and service in the land or naval forces of the United States?

“A. Yes, that is true, but it was to please my parents. They did not want me to come.”

Was that question asked of you and was that your answer? A. I don't remember.

(Reading.)

“Q. Did you know that the United States and Mexico were both engaged in a war during recent years against powerful enemies? A. Yes.”

The Court: We will take a five minute recess.

(Recess.)

Mr. Grean: There is a question pending, your Honor.

The Court: Read the question.

(Question read by the reporter.)

Q. (By Mr. Grean): Was that question asked and was that your answer? A. No.

Q. You say that question was not asked of you and that was not your answer? A. Yes.

(Reading.)

“Q. Did you know who those enemies were? [25]

“A. Germany and Japan.”

A. No.

Q. Was that question asked of you and was that your answer?

(Testimony of Angel Vidales.)

A. No. I answered I didn't know.

(Reading.)

“Q. Did you know approximately when that war began? A. About 1940.”

That is at the top of page 6. A. No.

Mr. Grean: Did you ask him if that question was asked and if that was his answer, and his answer is “No”?

The Interpreter: Yes.

Q. (By Mr. Grean): “Q. Did you know when active hostilities in that war terminated?

“A. I think 1944, or 1945.” A. Yes.

Q. That question was asked of you and that was your answer? A. Yes.

(Reading.)

“Q. Knowing that you were a citizen of the United States, and knowing that your country, the [26] United States, was engaged in a perilous war, did you feel no obligation, during the years 1942 to 1945, inclusive, to enter the United States to offer your services in the armed forces of your country? A. Yes.”

A. Yes.

(Reading.)

“Q. Then why did you not do so?

“A. Because my parents would not let me on account of the war.”

Was that question asked of you and was that your answer? A. Yes.

Q. Well, now, you have testified this morning,

(Testimony of Angel Vidales.)

Mr. Vidales, that you knew nothing about the war, and yet you now testify that this question was asked of you, "Then why did you not do so?" "Answer: Because my parents would not let me on account of the war." You testified that that question was asked of you and that was your answer. Now, how do you account for testifying you didn't know anything about the war, and this answer that you gave when you were questioned?

The Interpreter: Your Honor, that is a very long question.

The Court: Read it.

(Pending question read by the reporter.)

A. Well, I didn't remember about that, about the [27] question you are asking me now.

Q. (By Mr. Grean): Do you remember about the questions, now, Mr. Vidales, that they have been read to you? A. No.

Q. Obviously, Mr. Vidales, the questions and answers which you were purported to have given at the time of that hearing and your answers this morning differ. Do you have any explanation?

A. Well, I don't remember about all the questions.

Q. Well, are the answers to these questions that I have read to you correct?

A. I don't know, because I don't remember.

Q. I call another question to your attention:

"Q. What wages have you earned as an agricultural laborer in Mexico?"

(Testimony of Angel Vidales.)

“A. Generally about two or three pesos a day.”

That is on page 3.

A. That is true.

Q. And yet you testified here this morning, Mr. Vidales, that you were not paid for your labor.

A. Well, after I was able to work, outside of the work of my father, when I would work that is what I would be paid, and that would be only once in a while, not very often.

Q. Do you speak and understand English, Mr. Vidales?

The Witness: No. [28]

A. (Through the Interpreter): No. I understand very little.

Mr. Grean: I have no further questions of this witness.

Mr. Widoff: Could I have this transcript? Thank you.

Redirect Examination

By Mr. Widoff:

Q. As I understand it, then, you did work occasionally, is that right, for wages?

A. Yes, but only once in a while.

Q. And did you ever save any money?

A. No.

Q. When you were asked these questions on these occasions that Mr. Grean just called your attention to, were they asked in Spanish or in English?

A. At that time, when I was there, I was only spoken to in Spanish.

(Testimony of Angel Vidales.)

Q. The questions were made in Spanish and the answers you gave were in Spanish?

A. Yes. We were only talking in Spanish then.

Q. Do you recall ever telling anybody at that time that you did not come to the United States because your parents did not want you to serve in the war?

A. I don't remember.

Q. What did you say at that time respecting why you didn't come to the United States [29] sooner?

A. Well, that I have no money to come with.

Q. Did you tell anyone at that time that you knew that there was a war on at the time before you left the ranch?

A. Well, yes, I would hear people that would come to the town there talk about that, but that was in 1945, at the time when I wanted to come here.

Q. That is when you were coming, that is when you were on your way to the United States?

A. Yes, when I had all my plans and I was already at the town.

Q. And when you told them at that time, when you had been interrogated, that you knew the war was on, you were referring then to the time that you were on your way to the United States?

A. Yes, because when I was already at the town one could talk about the war, but before that I didn't know anything about it.

Q. You found out about who the enemies of the United States were when you were in this country?

(Testimony of Angel Vidales.)

A. Yes, Japan.

The Court: You are asking him leading questions and in your leading questions you are just tripping him into a contradiction of his own testimony. He just got through testifying that he learned it down there, in the town down there, and then you asked him a leading question and he answers it [30] "Yes," and he contradicted his own testimony.

Mr. Widoff: Well, I was just referring to who the enemies were, your Honor.

The Court: That is what you referred to before, and he said he learned who the enemies were down there in the Mexican town. Then you gave him a leading question and he contradicted his testimony.

Mr. Widoff: Pardon me. I asked him when he learned of the war. He said he learned of the war—

The Court: All right, you may proceed.

Q. (By Mr. Widoff): Did you know, when you were down in Zacatecas, in Mexico, in Juarez, I believe it was, did you learn who the enemies of the United States were at that time?

A. No, I didn't know that until I was here.

Q. At that time, when you heard them talk about the war, did you know who was fighting in the war—down in Mexico? A. No.

Q. What was it that you heard at that time when you were on your way down to the United States? What did you hear about the war?

(Testimony of Angel Vidales.)

A. Well, only that the United States was at war.

Q. Did you inquire as to who the war was between, who was fighting in a war?

A. No, I didn't inquire, but, you know, coming on the [31] bus they were talking about it there, and I heard about it on the train.

Q. Now, this place that you were living in, you said, was near Valpariso?

A. Yes, it was about 50 or 60 miles outside of the little town.

Q. When did you first make your plan to come to the United States, in relation to the time you left, how long before?

A. About eight months or nine or ten months or thereabouts.

Q. And before you made your plans, did you think about coming to the United States?

A. Yes.

Mr. Widoff: That is all.

Recross-Examination

By Mr. Grean:

Q. When you first heard about the war, on the bus, on the way to the United States, did you hear that the war was over?

A. They only talked about the war but they didn't say whether it had ended or not.

Mr. Grean: No further questions.

Mr. Widoff: That is all.

The Court: You may step down. [32]

Mr. Widoff: No further questions, your Honor.

Mr. Grean: Have you rested your case, Mr. Widoff?

Mr. Widoff: Yes.

(Whereupon the plaintiff rested his case in chief.)

(And thereupon the defendant, to maintain the issues on his behalf, offered and introduced the following evidence, to wit:)

Mr. Grean: I would like to call to the stand, please, Mr. Lloyd, Mr. R. J. Lloyd.

RALPH J. LLOYD

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Ralph J. Lloyd.

Mr. Grean: May I have marked for identification record of hearing certified by the Department of Justice?

The Clerk: Defendant's Exhibit A for identification. The whole thing or just this one page?

Mr. Grean: The portion that refers to the hearing only.

(The document referred to was marked Defendant's Exhibit A for identification.)

Direct Examination

By Mr. Grean:

Q. What is your occupation, Mr. Lloyd?

A. I am an immigrant inspector working in the

(Testimony of Ralph J. Lloyd.)

United [33] States Immigration and Naturalization Service at the present time.

Q. And what was your occupation on August 6, 1948?

A. At that time I also was an immigrant inspector, acting as chairman of the Board of Special Inquiry at the port of Calexico, California.

Q. I show you Defendant's Exhibit A for identification and ask you if you recognize that document?

A. Yes, I do.

Q. And what is it, Mr. Lloyd?

A. It is a copy of the record of the Board of Special Inquiry hearing held at Calexico, California, on August 6, 1948, with myself as chairman, F. K. Boynton as board member, and Elsie J. Willey as member and secretary.

Q. And who was interpreter at that time?

A. I was.

Q. And will you tell us the manner of the transcribing of the record which you have before you?

A. Briefly, a person who is held to appear before a board of special inquiry, at the time that they apply for entry into the United States, on the part of a primary inspector, or those cases in which the primary inspector cannot arrive at an honorable decision in a very short time, and he holds a person to appear before a board of special inquiry which consists usually of three [34] members.

Q. Is that what happened in this case?

A. Yes, sir, it is.

(Testimony of Ralph J. Lloyd.)

Q. Proceed.

A. And after the person is held to appear before a board of special inquiry, shortly thereafter they come before the board and at the board of special inquiry the order ordering the person to appear before the board is read into the record, which begins a board record.

The applicant is advised of the purpose of the board of special inquiry. He is asked as to whether he wants counsel, whether he wants friends or relatives present, he is given a choice of the language that the hearing will be held in, and the hearing proceeds with three members present. In this case two immigrant inspectors, one of them acting as board chairman and stenographer.

Q. Will you refer to the record now, please, and see if what you have just related was true also in this case? A. Yes, sir. It was.

Q. And you as interpreter asked the questions, Mr. Lloyd? A. Yes, sir.

Q. And the questions were first asked in English and translated into Spanish, and tell us just how that works.

A. The mechanics of that are that the board chairman gives the question first in English so the stenographer can [35] take it directly on the typewriter. Then, in this instance myself, the interpreter interprets the question to Spanish. Applicant answers the question, and the interpreter interprets the answer to English, and the board chair-

(Testimony of Ralph J. Lloyd.)

man, for the stenographer to take it down as it is interpreted from Spanish to English.

Q. Now, in interpreting the questions and answers, Mr. Lloyd, and if necessary you may refer to the record to refresh your memory, do you give the interpretation of everything that is said in the answer?

A. Yes, sir, we do that as literally as possible.

Q. And did you do so in this case?

A. I did.

Q. You say that because it is your custom to do that in all cases, or is there something about this case that refreshes your memory?

A. No. That is the way all cases are handled.

Q. I call your attention to the last page of Exhibit A, wherein it is stated, "Applicant's Departure to Mexico, Witnessed by Inspector Lloyd," and the signature thereon, "Ralph J. Lloyd." Is that your signature?

A. Yes, sir.

Q. And what does that mean, Mr. Lloyd?

A. That means that the applicant's departure to Mexico was witnessed by the board chairman, myself in this instance, [36] and that the record is complete, the board record.

Q. Now, there is a further signature below that of yours, "Elsie J. Willey." Do you recognize that signature?

A. Yes, sir, I do.

Q. And then there is a statement:

"I hereby certify that the foregoing to be a true and correct transcript of the testimony given in this hearing as taken by me directly on the type-

(Testimony of Ralph J. Lloyd.)

writer."

Now, do you know of your own knowledge that each question as translated by you, as stated by you in English, and the translation of the answer given, was transcribed correctly in that record?

A. Yes, sir, I do.

Q. You had occasion to read the record before the certification was made? A. Yes, sir.

Q. At the time when it was fresh in your memory? A. That is correct.

Q. Now, were any questions asked of the applicant for admission at that time, the plaintiff in this case, that were not recorded in that transcript?

A. If there were, I don't recall any. Usually all the questions and all the answers as complete as we can go into that record. [37]

Q. Were there any answers or questions which do not appear in the transcript?

A. I don't believe so.

Mr. Grean: I offer Defendant's Exhibit A for identification in evidence.

The Court: It may be received.

Mr. Grean: For the purpose of the contradictory statement therein called to the attention of the court.

The Clerk: Exhibit A in evidence.

Mr. Widoff: That is just for the purpose of the contradictory statements, is that correct, counsel?

Mr. Grean: That is correct, unless counsel wants to stipulate that the whole transcript be considered by the court.

(Testimony of Ralph J. Lloyd.)

Mr. Widoff: That is, I don't think it would be admissible otherwise except to impeach the witness.

The Court: It will be received. As a matter of fact, you did not mark the questions that were answered "No," did you?

Mr. Grean: I did not mark them, no.

(The document referred to, marked Defendant's Exhibit A, was received in evidence.)

Mr. Grean: I have no further questions, Mr. Lloyd.

Mr. Widoff: May I have a copy of that so I can question the witness? Thanks. I hope you have a copy there. [38]

Mr. Grean: Yes; I have one, thank you.

Cross-Examination

By Mr. Widoff:

Q. I notice there is a question on page 5 that was referred to, I believe, by counsel, in which the question reads:

"Since September 27, 1944, have you remained outside the jurisdiction of the United States, in time of war, or during a period declared by the President to be a period of national emergency, for the purpose of evading or avoiding training and service in the land or naval forces of the United States?"

Did you ask that question in Spanish or in English?

A. In Spanish. First in English and then later

(Testimony of Ralph J. Lloyd.)
in Spanish.

Q. Did you ask him if he knew the meaning of the word "jurisdiction"?

A. No, I did not.

Q. Did you ask him if he knew the meaning of the wording "national emergency"?

A. No, I did not.

Q. I notice a question there as follows:

"Why was it that he gave you permission to come to the United States, after October, of 1945, while [39] he would not before?"

That is referring apparently to the father. And the answer was:

"The only reason that I can give at this time was that I was so small."

That is the correct question and answer made at that time, would you say?

A. Yes, sir, I believe so.

Mr. Widoff: The question I just referred to, your Honor, is on page 5, the second question from the top.

The Court: Yes.

Q. (By Mr. Widoff): And on page 6 of this transcript there is a question:

"Did you know approximately when that war began?"

The answer is, "About 1940."

But do you recall whether that question had any relation to the time when he was supposed to have known that? He might have learned that while he was in the United States. Did you explain it to

(Testimony of Ralph J. Lloyd.)

him as to what time he was referring to, as to when he knew that the war began?

A. I don't—

Mr. Grean: May the witness refer to the statement, please? If your Honor please, I am going to object. The witness has testified that the questions and answers were in the record. Now counsel is asking for an explanation of [40] questions which do not appear in the record.

The Court: The question is argumentative.

Mr. Widoff: Well, what I meant to ascertain was whether he had explained to the witness at the time—

The Court: He has testified that it is all in here.

Mr. Widoff: Of course, some of these things, you know, can be off the record.

The Court: It is a matter of interpretation for the court as to what the meaning of it is.

Mr. Widoff: The only point I am trying to get at is, did he put any explanations off the record in the questions?

The Court: You can ask him that question, did he explain to him off the record.

Q. (By Mr. Widoff): In regard to this particular question I asked you, referred to just now, that is the second question from the top on page 6, did you off the record explain to him as to what time you were referring to or ask him to state the time that he learned of this information about when the war began?

A. I don't believe I gave him any further ex-

(Testimony of Ralph J. Lloyd.)

planation other than the questions that precede this one.

Mr. Widoff: That is all.

The Court: Mr. Reporter, there was a question when Mr. Grean was interrogating the plaintiff, which starts with, "Knowing that you were a citizen of the United States." See [41] if you can find that question.

(Record read by the reporter.)

The Court: You may step down.

I would like to ask the plaintiff a question.

ANGEL VIDALES

the plaintiff, recalled as a witness by the court, having been previously duly sworn, testified further through the interpreter as follows:

Examination

The Court: Now, when you were asked questions here just a few minutes ago, you were asked this question:

"Knowing that you were a citizen of the United States, and knowing that your country, the United States, was engaged in a perilous war, did you feel no obligation, during the years 1942 to 1945, inclusive, to enter the United States to offer your services in the armed forces of your country?"

And the answer was, "Yes."

And this morning, when you were asked if you were asked that question and if you did give that

(Testimony of Angel Vidales.)

answer, you stated, "Yes," you were asked that question and that you did give that answer.

Now, my question now is, what type of obligation did you feel in 1942 to 1945? What do you mean by you felt an obligation, 1942 to 1945? [42]

A. Well, in 1942 I did not know anything about those things.

In the first place, I didn't know anything, any laws at all and after that I didn't know anything—I didn't know much about anything. I was always around in the High Sierras.

The Court: But you just testified this morning that you said during 1942 to 1945, you felt an obligation to enter the United States to offer your services in the armed forces.

A. Was that in '44 or '45?

The Court: 1942 to 1945. Well, let me put it this way:

When was the first year that you felt the obligation to enter the United States to offer your services?

A. In '45.

The Court: And that was your intention, to come and offer your services in the armed forces?

A. Well, at that time I didn't even know yet whether it was my obligation to give my services or not.

But when I came to the border, that was the first thing they told me, that I had to give my services, and I told them yes, that I would.

(Testimony of Angel Vidales.)

The Court: When you were asked then, "Then why did you not do so?" Why did you answer, "Because my parents would not let me on account of the war"?

A. No, it wasn't; it wasn't; that wasn't on account of the war, because really they weren't really aware of that [43] themselves.

Because I had no means to move around, to travel; they couldn't tell me to go ahead, to go.

The Court: That is all.

Mr. Grean: The defendant rests.

(And thereupon the defendant rested his case.)

The Court: Any argument?

Mr. Widoff: Yes, your Honor, I would like to argue the matter.

The Court: For how long?

Mr. Widoff: For about five minutes is all.

The Court: All right.

Mr. Widoff: Your Honor, it appears to me that this man is telling the truth in so far as he said that he didn't know anything about this war. He was living on this ranch out in the High Sierras, he says, and was not aware of any laws or obligations. He was raised on a ranch where there was hardly anybody around there but his family. They are not people of education and they were isolated up there, and it appears to me from my knowledge of the Mexican people, and I have had them as clients for about 25 years, that that is a very plausible story.

I have had many instances of this type before, with people who are up in the mountains and on little ranches of that type, eking out an existence by growing this corn, who just didn't know what was going on in the rest of [44] the world for years at a time.

The only contact that they had with the outside world was once in a while when they would come in on horseback to some village in the vicinity to get supplies, and this boy was 60 to 70 miles from the nearest village of 500 people, and even the Mexican Government never had contact with these people or bothered to get them to register for military service or anything like that.

The Court: Mr. Widoff, his stories are so inconsistent, it is impossible to believe him.

Let us take, just for example, that last question, and of course he changed his story then from the time he was on the stand before, regardless of how you construe it, he testified as to that question, "Knowing that you were a citizen of the United States, and knowing that your country, the United States, was engaged in a perilous war, did you feel no obligation, during the years 1942 to 1945, inclusive, to enter the United States to offer your services in the armed forces of your country?" And the answer was, "Yes." He testified on cross-examination and that was one question he answered "Yes" to. There were some he said he didn't remember, but he did give that answer at that time.

Now, when I questioned him here, stating that it was between 1942 and 1945, he avoided the early

years and he said, "1945." But assuming that that is correct when he said [45] "1945," then I asked him, "When did you first feel the obligation to enter the United States?" And he said, "1945."

Then he was asked, "And is that why you left, because you felt that obligation in 1945?"

He had already testified previously that he never learned at all about this until after he had left there; in other words, the war was over. He never could have felt an obligation to enter the armed forces of the United States at a time of war because there was no war, if you believe his other story.

Now, in testifying before, he testified that he learned that the United States was at war. If we are to believe him, he wasn't even sufficiently interested to find out who this country was at war with. It is ridiculous that someone told him that the United States was at war and he wasn't sufficiently interested to find out who they were at war with. And yet he would tell us now that he felt an obligation to join the armed forces of the United States, although he was not sufficiently interested to ask who they were at war with. He just heard it. Perhaps it might have been a war with Mexico. It would have made a difference to him, if he was interested at all, because he lived most of his life in Mexico.

Now, could you believe a story like that if you didn't have an interest in the case? If you were sitting up where I am, could you believe a story like that? [46]

Mr. Widoff: Well, your Honor, I have known these Mexican people for a long time, and it makes a big difference in the way you receive these stories from these people. The more familiar and more intimate one is with these people, the better you can understand them, because they live in a whole lot different life, than a person who hasn't had so much contact with them as I have had.

The Court: Supposing he told me there was a war and I just shrugged my shoulders and wasn't interested? I don't believe that he wouldn't ask who they were at war with. But he was conscious of the fact at that time that he was an American citizen, and if an ordinary citizen would find out that the United States was at war, he would want to find out who they were at war with. I could believe an unusual person who would shrug his shoulders and not be interested, but he has testified that he felt an obligation to the United States.

Mr. Widoff: I don't believe he meant that. That question was a long question.

The Court: I am not referring to the question in the record of the other hearing. I am referring to the question that I asked him.

Mr. Widoff: That is true, but I don't believe that the witness even understood that question. I mean it is just too much for his mental capacity.

The Court: I took into consideration the fact that he [47] might not have understood the question itself. The fact that he answered that question in that way is a complete indictment of him, and the fact that he answered that question in that way in itself is sufficient. But I went back to the

very reason that you speak of, to make certain as to whether or not he had made a mistake and whether or not he understood it. He understood it very well. He immediately became very evasive as to the years.

But whether he has language difficulties or anything else, there aren't many people who can sit on a witness stand and tell a long story and go through all this, if they are not telling the truth, without having something jump up and bite them, and of course that is indicated here when, as I say, to get away from those early years because of the questions that have been subsequently asked, he then said, "1945." He doesn't say, though, that he never felt that obligation to enter the armed forces. So I asked him, "When did you feel the obligation to enter the armed forces?" Then he said, he did not know about it at that time, but when he first learned of the war down there, then he felt an obligation to enter the armed forces of the United States. I asked him if that was why he came back here. He said, "Yes," that is why he came back, because he felt the obligation to enter the armed forces.

Now, take that and put it alongside of his prior [48] testimony, when he testified just a few minutes ago, when you were examining him, that he heard about the war on the bus and on the train. You then asked him when did he first learn with whom we were at war, and he said in the United States or when he got over into the United States he learned from his relatives here in the United States. So then you straightened him out. You established the fact that when he learned this fact down on the train and bus he did not even inquire as to whom we were at war with.

So you end up with a man who is coming to the United States for the purpose of entering the armed forces because of his obligation to enter the armed forces of the United States, a man who discussed it with people on trains and busses and hears about the war on the trains and busses, and never inquires as to whom we are at war with. That is just too much for a trier of facts.

Mr. Widoff: Your Honor, let me just give you my version of this. I don't know whether it will impress you, your Honor, but I would like to get this off my chest, because I do feel sincerely, your Honor, that this boy was raised in this isolated place, and he had no feeling about a stituation of citizenship, he hardly knew what that thing was. That was a vague word that just didn't mean anything to him, it had no meaning at all as far as his feeling any obligation to the United States. He didn't even get any schooling. He didn't [49] even know what patriotism was or what loyalty was.

The Court: I agree with you 100 per cent, that is exactly true. That is exactly what happened. He felt no obligation at all to come back.

Mr. Widoff: That is right.

The Court: And he stayed down there to keep from going into the armed forces here. When he stated that he came back because he felt an obligation, I am not saying that is a true statement. It is just one more inconsistent statement. The significance of that is the same as the significance about the story he told about when he was on the bus and train, that he heard that the United States was at war and never asked who the United States

was at war with. Those things just don't happen. As I said, possibly it could happen with an unusual person who was a citizen of the United States and coming to the United States after a long absence and he hears someone talking about the war and they tell him the United States is at war, and he doesn't even ask anything about who they are at war with. He doesn't even ask that. It might have been Mexico that we were at war with. As I say, that standing alone is unbelievable. It could be from an unusual person, but we exclude even the unusual person when we take his other statement that he was on his way here because of his obligation to enter the armed forces.

Mr. Widoff: I don't believe that, your [50] Honor.

The Court: What do you believe?

Mr. Widoff: I believe this, that he heard that the United States was a good place to go to and make a nice living, that it was a land of milk and honey, like all other Mexican people who hear about the United States, and as soon as he was able to get enough money to go, from his parents, he just set out for the United States, and whatever he learned about the outside world he learned by talking to people on the way down here. He did stay with a cousin at the first town and then he stayed with another friend at Juarez, and he did learn those things at that time and then, when he came over here to register.

The Court: Counsel, there are some guideposts that are very true and they never vary in all the

cases we try. There is one thing you can be sure of, and that is, if he had learned those things at that time, about the same time, we wouldn't find these inconsistencies, he would have come right out and said it, and that pattern would be shown clearly in that transcript and it would be shown here, he would have said, "Yes, I knew before I left Mexico, I knew there was a war. I left my ranch up there, and I went down to see my cousin Pedro" at such and such a place, "and my cousin said, 'There is a war going on up there. You better not go up there or you will get into a war.' I said, 'Yes, I will go up there,' and I went over to see my cousin." In other words, [51] there would be a straight story and there wouldn't be all this evasiveness.

Take your theory. Of course you must be figuring that he forget to tell us that his cousin Pedro told him about a war when he was down there. That is the first thing he would be thinking of. If that had happened, if he had first learned about the war when he left the ranch and started here to get a job, to get better wages, and he learned from his cousin Pedro or from someone else about a war, the first time he spoke to these people at the border that is the first thing he would have said, and the first time when he came into your office it would have been the first thing he would have told you, and when he got on the stand he would have told the story here. So you know it didn't happen.

He started to testify on the stand this morning and his testimony to me was that he was completely in the dark and didn't know anything, that he was

out on a ranch there where he did not know anything, he was completely in the dark until of course, he was faced with these questions on cross-examination and was confronted with these questions which were asked down there. Then for a while he would say, "I don't remember," but then he picked up some of the questions and answered "Yes" to some of them, and even answered "No" to a few of them. But all that means is confusion when he is confronted with that. [52]

How could he remember here, as he sat here this morning, that he did say "Yes" when they asked him if he hadn't felt an obligation from 1942 to 1945, if he hadn't felt an obligation to enter the armed forces of the United States? And here this morning he said, "Yes," he did tell them.

Then, when he was asked these other questions, he said he didn't remember.

If he had a lapse of memory and could not remember anything down there, that would be different.

The Judgment will be for the defendant. Mr. Grean will prepare findings and present them to the court. [53]

[Title of District Court and Cause.]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified, and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and

correct transcript of the proceedings had in the above-entitled cause on Tuesday, July 14, 1953, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 9th day of October, A.D. 1953.

/s/ THOMAS B. GOODWILL,
Official Reporter.

[Endorsed]: Filed October 9, 1953. [54]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 27, inclusive, contain the original Petition for Declaration of United States Nationality, etc.; Answer to Plaintiff's Complaint; Pre-Trial Order; Minutes of the Court for July 14, 1953: Findings of Fact and Conclusions of Law; Objections to Proposed Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Statement of Points on Appeal and Designation and Supplemental Designation of Record on Appeal which, together with Original Defendant's Exhibit A and Reporter's Transcript of Proceedings on July 14, 1953, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 9th day of October, A.D. 1953.

[Seal] EDMUND L. SMITH,

Clerk;

By /s/ THEODORE HOCKE,

Chief Deputy.

[Endorsed]: No. 14076. United States Court of Appeals for the Ninth Circuit. Angel Vidales, also know as Angel Vidales-Galvan, Appellant, vs. Herbert Brownell, Jr., Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: October 12, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 14076

ANGEL VIDALES, Also Known as ANGEL
VIDALES-GALVAN,

Appellant,

vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States,

Appellee.

STATEMENT OF POINTS

1. That the Court erred in adjudging that the Appellant is not a national or citizen of the United States, having expatriated himself by remaining outside of the jurisdiction of the United States, after September 27, 1944, in time of war and during a period declared by the President to be a period of national emergency, for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

2. The Court erred in its receipt and rejection of evidence.

3. The evidence is insufficient to sustain the judgment.

/s/ J. WIDOFF,

Attorney for Appellant.

[Endorsed]: Filed October 26, 1953.

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